

## NOTIFICATION OF WATER RIGHT APPLICATIONS TO INDIAN TRIBES

Resource Contact: Coordination and Technical Services Section

Effective Date: 2-12-90

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## References:

Purpose: To further the state's government to government relations with federally recognized tribes located in the state of Washington with respect to the cooperative management of water resources within the state.

Application: This policy applies only to water right applications received pursuant to chapters 90.03 and 90.44 RCW.

1. Notify the appropriate Indian tribe

The Department of Ecology, Water Resources Program, will notify the appropriate Indian tribe of water right activities which affect waters that border, flow through, or are within the exterior boundaries of their Indian reservation, their usual and accustomed fishing areas, or traditional use areas. Notification concerning new water right applications and applications to change existing water rights will be sent to the appropriate tribe.

2. Notification is tribal specific

Each tribe has specific concerns related to water resource management. Separate and different procedures exist for each tribe because the tribes have expressed different needs. For example, some tribes do not want to be notified of ground water applications while others do not want to be notified of any proposed appropriation less than 1 cubic foot per second of water. Tribes can revise their geographic areas of interest at any time. Please see PRO-1105A for tribal specific procedures.

3. Tribal comments

A sixty-(60) day tribal review and response time on each water right application will be provided. If for some reason comments cannot be provided within sixty (60) days, additional time may be provided upon written request. The justification for delayed commenting on a particular water right application should be based on inaccessibility of the project site due to weather and/or inability to assess impacts due to current hydrology.

Tribal comments should be substantive in nature. They should relate specifically to fish biology, fish management, wildlife, or habitat issues and impacts. Current information, based on field investigations, is preferred. Projected impacts of a proposed appropriation should be site specific and quantified to the extent possible.

4. Consideration of comments received from Indian tribes

The tribe's commenting official will be contacted by the regional office if clarification of tribal comments is required. An effort will be made to work out any differences, related to the factual situation of the application, between the regional office and the commenting official for the tribe. Tribal comments will be addressed in the report of examination. A copy of the report of examination will be provided to the tribe on any application upon which the tribe submitted substantive comments. If the tribe's response on any application is "no comment," a copy of the report of examination for that application will not be sent to the tribe.

5. Dispute resolution with Indian tribes

If differences of opinion cannot be worked out between the regional office and the commenting official for the tribe, the section supervisor will seek guidance from the program manager. The dispute resolution process will be exhausted before a report of examination is issued. See procedure PRO-1043A for dispute resolution process. A report of examination, which significantly deviates from the substantive comments provided by the tribe, may be issued only upon approval of the program manager.

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Water Resources Program

**Special Note:** These policies and procedures are used to guide and ensure consistency among water resources program staff in the administration of laws and regulations. These policies and procedures are not formal administrative regulations that have been adopted through a rule-making process. In some cases, the policies may not reflect subsequent changes in statutory law or judicial findings, but they are indicative of the department's practices and interpretations of laws and regulations at the time they are adopted. If you have any questions regarding a policy or procedure, please contact the department.